Supreme Exteriors, Inc. *and* Local 67, Operative Plasterers' and Cement Masons' International Association, AFL–CIO. Case 7–CA–32649

March 31, 1992

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS DEVANEY AND RAUDABAUGH

Upon a charge filed by the Union on December 5, 1991, the General Counsel of the National Labor Relations Board issued a complaint against Supreme Exteriors, Inc., the Respondent, alleging that it has violated Section 8(a)(1) and (5) of the National Labor Relations Act. Although properly served copies of the charge and complaint, the Respondent has failed to file an answer.

On March 9, 1992, the General Counsel filed a Motion for Default Judgment. On March 11, 1992, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Default Judgment

Section 102.20 of the Board's Rules and Regulations provides that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. The complaint states that unless an answer is filed within 14 days of service, "all the allegations in the Complaint shall be deemed to be admitted true and may be so found by the Board." Further, the undisputed allegations in the Motion for Default Judgment disclose that the Regional attorney for Region 7, by letter dated February 21, 1992, notified the Respondent that unless an answer was received by February 28, 1992, a Motion for Default Judgment would be filed.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Default Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent, a corporation with an office and place of business in Haslett, Michigan, has been engaged in the business of exterior plastering. During the calendar year ending December 31, 1990, Respondent, in conducting its business, derived gross revenues in excess of $250,000. During the same period of time, Respondent, in conducting its business, provided services from its Haslett, Michigan facility valued in excess of $50,000 directly to enterprises within the State of Michigan, each of which, in turn, made sales directly to customers outside the State of Michigan valued in excess of $50,000. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

In or about June 1989, Respondent, in writing, agreed to be bound by all provisions contained in a collective-bargaining agreement between the Detroit Association of Walls and Ceiling Contractors and the Union, which collective-bargaining agreement was effective from June 1, 1989 to May 31, 1991. The parties negotiated a successor collective-bargaining agreement effective from July 1, 1991 to May 1, 1992.

All journeymen and apprentice plasterers employed by Respondent at its Haslett facility constitutes a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

At all times material, the Union, by virtue of Section 8(f) of the Act, has been the designated limited exclusive collective-bargaining representative of Respondent's employees in the unit described above. By its agreement to be bound by the provisions of the June 1, 1989 collective-bargaining agreement referred to above, including agreeing to submit to the jurisdiction of the joint negotiating committee, Respondent agreed to be bound by all provisions of the agreement, including any new agreements negotiated by the Association and the Union and/or any renewal of the 1989 contract.

The collective-bargaining agreements described above provide for the remittance to the Union of contributions to the vacation fund, hospitalization fund, and pension fund on behalf of unit employees, which constitute mandatory subjects of bargaining. Since on or about June 1991, and continuing to date, Respondent has failed and refused to make the contributions required under the collective-bargaining agreements described above. Respondent took this action without prior notice to and/or bargaining with the Union.

CONCLUSION OF LAW

By failing and refusing, since on or about June 1991, and continuing to date, to make contributions required under the collective-bargaining agreements, without prior notice to or bargaining with the Union, as set forth above, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1), as explained in Section 8(d), and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

We shall order Respondent to make the contractually required contributions on behalf of the unit employees to the funds set forth above, retroactive to June 1991.

The Respondent shall also make unit employees whole for any losses attributable to its failure to make the contractually required payments, as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enfd. mem. 661 F.2d 940 (9th Cir. 1981). All payments to employees shall be made with interest to be computed in the manner prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

ORDER

The National Labor Relations Board orders that the Respondent, Supreme Exteriors, Inc., Haslett, Michigan, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to bargain in good faith with Local 67, Operative Plasterers' and Cement Masons' International Association, AFL–CIO as the limited exclusive representative of its employees in the following appropriate unit by failing and refusing, since on or about June 1991, and continuing to date, to make contributions required under the collective-bargaining agreements, effective from June 1, 1989 to May 31, 1991, and from July 1, 1991 to May 1, 1992, between the Detroit Association of Walls and Ceiling Contractors and the Union, without prior notice to or bargaining with the Union:

> All journeymen and apprentice plasterers employed by Respondent at its Haslett facility.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Make the contractually required contributions on behalf of the unit employees to the vacation fund, hospitalization fund and pension fund, retroactive to June 1991, and make unit employees whole, with interest, for any losses attributable to its failure to make the contractually required payments.

(b) Preserve and, on request make available to the Board or its agents for examination and copying all payroll records, social security payment records, timecards, personnel records and reports and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(c) Post at its facility in Haslett, Michigan, copies of the attached notice marked "Appendix."[1] Copies of the notice, on forms provided by the Regional Director for Region 7, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(d) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

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[1] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT fail or refuse to bargain in good faith with Local 67, Operative Plasterers' and Cement Masons' International Association, AFL–CIO as the limited exclusive representative of its employees in the following appropriate unit by failing and refusing, since on or about June 1991, and

continuing to date, to make contributions required under the collective-bargaining agreements, effective from June 1, 1989 to May 31, 1991, and from July 1, 1991 to May 1, 1992, between the Detroit Association of Walls and Ceiling Contractors and the Union, without prior notice to or bargaining with the Union. The appropriate unit is:

> All journeymen and apprentice plasterers employed by Respondent at its Haslett facility.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL make the contractually required contributions on behalf of the unit employees to the vacation fund, hospitalization fund and pension fund, retroactive to June 1991, and make unit employees whole, with interest, for any losses attributable to its failure to make the contractually required payments.

SUPREME EXTERIORS, INC.